

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-221-C - ORDER NO. 2003-636
OCTOBER 22, 2003

IN RE: Rufus Watson, Bay Meadows Homeowners Association,)	ORDER RULING ON
)	MOTION FOR
Complainant,)	JUDGMENT ON
)	PLEADINGS AND ON
vs.)	REQUEST TO DISMISS
)	AND SETTING
Horry Telephone Cooperative, Inc.,)	HEARING AND PREFILE
Respondent.)	DATES
_____)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on two matters raised by the parties to this proceeding. Specifically before the Commission are a Motion for Judgment on the Pleadings filed by the Complainant Rufus Watson on behalf of Bay Meadows Homeowners Association (“Complainant” or “Mr. Watson”) and a request for dismissal filed by Respondent Horry Telephone Cooperative (“Respondent” or “HTC”).

This matter arose on a Complaint initiated by Mr. Watson on behalf of Bay Meadows Homeowners Association wherein Mr. Watson alleges that the Respondent HTC’s application and charge of a business service rate for certain telephone services provided to Bay Meadows Homeowners Association is unjust and unreasonable. HTC filed a response to the Complaint pursuant to 26 S.C. Code Regs 103-820. Thereafter, an informal proceeding was scheduled by the Commission Staff in an attempt to resolve this matter. Before the scheduled informal proceeding could be held and following

communication with Mr. Watson and Staff members, the Commission was advised that Mr. Watson requested to proceed to hearing on the Complaint. The Commission granted the request for a formal hearing, and thereafter prefilng deadlines for the prefilng of testimony and exhibits pursuant to 26 S.C. Code Regs. 103-869 were established by Commission Order.

On September 22, 2003, the Commission received Mr. Watson's Motion for Judgment on the Pleadings. HTC filed Return to Motion for Judgment on the Pleadings. Thereafter, HTC filed its request for dismissal of the proceeding.

By his Motion for Judgment on the Pleadings, Mr. Watson asserts that the facts in the case are uncontroverted and that no testimony or information is necessary for the Commission to find that HTC's application of a business rate to the telephones in question is unjust and unreasonable in violation of state law. HTC, by its Return to Motion for Judgment on the Pleadings, asserts there are no formal pleadings in this matter and acknowledges there are some facts which are not contested but further submits there are a number of facts which are contested as well as other facts relevant to the reasonableness of the rates charged.

HTC also submitted a request to dismiss the proceeding. By its request, HTC requests dismissal of this matter because Mr. Watson failed to comply with Commission Order No. 2003-510 which directed Mr. Watson to prefile testimony and exhibits in this case on or before October 1, 2003.

Upon consideration of Mr. Watson's Motion for Judgment on the Pleadings, the Commission finds and determines that the facts in the case are not uncontroverted but are

contested and that there is insufficient information upon which to decide the issues. Therefore, judgment on the pleadings is not appropriate, and the motion is denied. Thus, the Commission denies Mr. Watson's motion and orders that a hearing previously requested by Mr. Watson go forward.

As to HTC's request for dismissal, we hold that request in abeyance at this time. Mr. Watson filed his Motion for Judgment on the Pleadings and did not file prefiled testimony and exhibits as required by Commission Order No. 2003-510. While we do not condone nor take lightly the failure of a party to follow a Commission Order, we will allow another opportunity for Mr. Watson to prefile testimony and exhibits related to the instant proceeding. Therefore, we will set a new hearing date and new prefile dates to correspond with that new hearing date. However, we caution Mr. Watson that HTC's request for dismissal is merely held in abeyance at this time and should Mr. Watson not meet the prefile date set forth below, we instruct the Commission Staff to advise the Commission of that fact and to place HTC's request for dismissal on the Commission's agenda for action.

IT IS THEREFORE ORDERED:

1. That the Motion for Judgment on the Pleadings filed by Mr. Watson be denied.
2. That HTC's request for dismissal be held in abeyance at this time.
3. That should Mr. Watson not meet the prefile date set forth below, the Commission Staff is instructed to advise the Commission of the failure of Mr. Watson to

meet the prefile deadline and to place HTC's request for dismissal on the Commission's agenda for action.

4. That the hearing presently set for October 30, 2003, be rescheduled.

5. That the rescheduled hearing be set for December 17, 2003, at 2:30 p.m.

6. That pursuant to 26 S.C. Regs. 103-869(C)(Supp.2002), the Commission hereby orders that twenty-five copies of the direct testimony and exhibits of Mr. Watson shall be prefiled on or before **November 19, 2003**, and that twenty-five copies of the direct testimony and exhibits of HTC and/or the Commission Staff shall be prefiled on or before **December 3, 2003**. (Direct testimony and exhibits may be post-marked on these dates.) Also, any rebuttal testimony and exhibits of Mr. Watson shall be prefiled on or before **December 10, 2003**, and any surrebuttal testimony and exhibits of HTC and/or the Commission Staff be prefiled on or before **December 12, 2003**. (Rebuttal testimony and exhibits and surrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on these dates.) It should be noted that acceptance into the record of surrebuttal testimony and exhibits is subject to the discretion of the Commission. In addition, parties shall serve their prefiled testimony and exhibits on all other parties of record as required by the Commission's Rules and Regulations. All parties are reminded that all witnesses must be present during any hearing in this matter at the call of the Chairman, or the Commission may decline to allow the witnesses' testimony to be read into the record of the proceeding, and/or may decline to allow the witnesses' exhibits to be entered into the evidence of the case. Any

party requesting modification of this schedule must file a request for such modification with the Commission.

7. This Order shall remain in full force and effect until further Order of the Commission

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Acting Executive Director

(SEAL)